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Human Rights Committee

Concluding observations on the initial report of Montenegro

Addendum

Information received from Montenegro on follow-up to the concluding observations*

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Recommendation 7: national institutions for human rights

1. Protector of Human Rights and Freedoms of Montenegro (Ombudsman) is continuously carrying out activities to strengthen their capacity both, through new employment and empowerment through knowledge and skills of existing personnel. After the entry into force of the amendments to the Law on the Protector of Human Rights and freedoms of Montenegro, secondary legislations were adopted, as well as all acts within the competence of the Protector. Special attention is given to promotional activities in the field of protection against discrimination, including gender equality, prevention of torture and the protection of children's rights, while the new and separate workspace for the functioning of the National Preventive Mechanism (NPM) was provided. This contributes to increasing the visibility of the institution and strengthening its overall function of the Ombudsman. The cooperation with the NGO sector has been improved.

2. Strengthening the institutional capacity of the Ombudsman started in 2015 when five persons were employed, in particular: two in the field of discrimination, one in the field of prevention of torture, one in the field of protection of children's rights and one for general affairs and public procurement. During 2016, another five persons were employed, while new deputies to Ombudsman for the protection against discrimination as well as for the protection of children's rights were appointed. Therefore, ending October 2016, the Institution of the Ombudsman counted 32 employees in total.

3. In order to strengthen administrative and technical capacities, trainings for employees have been continuously conducted. Within the project "Strengthening Capacities of the Office of the Protector of Human Rights and Freedoms", numerous workshops and lectures have been organised, as well as judicial visits for employees who work on the protection from discrimination, NPM jobs (prevention of torture) and protection from torture. The Guidelines for handling discrimination cases by Ombudsman are adopted, as well as the Guidelines for Ombudsman working as the NPM. Furthermore, with the support of the Council of Europe, the implementation of a two-year project entitled "Support to the National Institutions in Preventing Discrimination (PREDIM)" has begun. This project encompasses education of employees in the Institution of Ombudsman working on the protection against discrimination, prevention of torture, as well as employees covering other jobs related to the protection of human rights. The project should provide development of information technology for improving the procedure of dealing with complaints of citizens, including trainings of staff. As part of this project, two study visits to the Institutions of Ombudsman of Slovenia and Sweden have been organised.

4. The Law on Budget for 2016 allocated funds in the total amount of 685,782.25 euros for the Protector of Human Rights and Freedoms. Comparing to 2015, funds have been increased only for salaries and other personal incomes in accordance with the newly adopted Law on Salaries of Public Sector Employees.

5. International activity of the Ombudsman has been reflected through the procedure of the accreditation of Ombudsman at the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights — ICC (OHCHR), which was successfully completed in August 2016. After the ICC meeting in May 2016, the Ombudsman is accredited with status B. Additional efforts toward strengthening the national human rights institutions are ongoing.

Recommendation 9: The responsibility for past human rights violations

6. In order to strengthen the fight against impunity for war crimes, the Supreme State Prosecutor's Office of Montenegro in May 2015 adopted a Strategy for War Crimes, while in July 2015 established a special, specialized prosecution — the Special State Prosecutor's Office, with responsibility for the crimes in the field of war crimes. Considering that the fight against impunity for war crimes must be improved through more effective investigation, prosecution, trial and punishment of these crimes, the Strategy prescribed the concrete steps to be taken in order to fulfil this goal. The Special State Prosecutor's Office

is responsible for the implementation of the Strategy, bearing in mind that focus must be on identification of events where potential suspects are Montenegrin citizens, as well as on the identification of Montenegrin citizens who may have been involved in paramilitary groups that were active in that area during the war. The Strategy envisages that the Prosecution Office should collect newspapers' articles, reports of non-governmental organizations, international humanitarian organizations, books and other publicly available information. In addition, the use of international legal assistance is encouraged in order to collect information and evidence. The Special State Prosecutor's Office works on eight cases in the field of war crimes. In another seven cases, war crimes, which are according to initial data carried out on the territory of Montenegro or the territory of neighbouring countries, are investigated. Cases are in the phase of the pre-trial investigation in which the actions taken include hearing of persons as witnesses or citizens, collecting physical evidence — documents relating to the subjected events. Bearing in mind that in certain cases offenses were committed on the territory of other countries, mutual legal assistance is requested from the competent authority of those countries and collecting certain information and evidence respectively.

7. In addition to these cases, which are active, there are four with the final judgment.

8. Furthermore, the Recommendation states: "The Committee is particularly concerned about the final judgment rendered in the case Bukovica, whereby is determined that past actions do not constitute a criminal offense provided for by law at the time when it had been committed". In this regard, we point out that the above consideration relates to the final judgment of the High Court in Bijelo Polje Ks.br. 6/11-10 of 03 October 2011. The said judgment acquitted the defendant of the charges under Article 373 item 2 of the CPC because it has not been proven that the defendant committed the charged offense.

9. The judgment of the Appellate Court of Montenegro Ksž.br. 1/12 of 22 March 2012 altered the cited judgment in such a way that defendants were acquitted of charges with reference to Article 373 item 1 of the CPC — the offense for which the defendant is charged with is not a criminal offence according to the law. Such decision was made due to the fact that the filed indictment charged a defendant of violation of rules of international rights during 1992–1995 as stipulated in Article 7 paragraph 2 of the Rome Statute to have taken actions therein described, which entered into force on 01July 2002. The conclusion was that the provisions of the Rome Statute could not amend the blanket provision of Article 427 of the Criminal Code, but only the rules of international law, as required under international acts, which have been ratified at the time when the accused is charged with a criminal offense. When it comes to crimes with a blanket provision, the indictment must indicate a referral norm, and with the provisions of Article 369 paragraph 1 CPC the court cannot change the said provision. Thus, in establishing a criminal offence, the court started from the description given in the indictment, not as mentioned in the stated recommendation that crimes against humanity under Article 427 of the Criminal Code was not envisaged by the law at the deadtable time.

Recommendation 18: Minority rights, civil registration of births, refugees and internally displaced persons

10. One of the major challenges faced by in the past and facing it even today is permanently resolving the situation of refugees and internally displaced persons from the former Yugoslavia. This issue is addressed through the development of the legal framework and strengthening of institutions, as well as through regional approach (Sarajevo Process) which included cooperation with the countries of origin of displaced persons.

11. The entry into force of the Law on Amendments to the Law on Foreigners 2009 significantly facilitated the procedure of resolving the legal status of refugees and internally displaced persons from former Yugoslav republics residing in Montenegro in a way that the right to permanent residence or temporary residence has been recognized. Displaced/internally displaced person is obliged to obtain and submit to the competent authority in Montenegro a passport, a copy of the birth certificate and a certificate of citizenship from the country of origin in order to qualify for permanent residence. These

documents are required, among other things, to determine the identity, because their registration upon arrival in Montenegro is mainly performed based on the oral statement of the person, and there is the possibility of a replacement of identity or presentation of false identity of the person. It is important to emphasize that, in the process of resolving claims, these persons are not required to present the proof of means of subsistence, accommodation and health insurance. Obtaining the status of permanent resident foreigner, a displaced person, among other things, has the right to an identity card for foreigners, as a personal ID document proving the identity of the person and/or that s/he is the person with the status of foreigners with permanent residence in Montenegro, and the nationality of the country of origin. This status of displaced persons and IDPs, enable them the integration into Montenegrin society and the right to work and employment, education, vocational training, recognition of diplomas and certificates, access to social assistance, health and pension insurance, tax relief, access to the labour market and services, freedom of association, connectivity and membership in organizations that represent the interests of workers or employers. Although Montenegro has provided a streamlined procedure and/or privileged access to rights including multiple cutbacks of administrative fees, there were persons who had difficulties in their home countries in the process of obtaining the required documents. The new Law on Foreigners ("Official Gazette of Montenegro", No. 56/14, 28/15 and 16/16) does not treat the issue of displaced and internally displaced persons, except that this law lays down that proceedings initiated prior to the implementation of the new Law on Foreigners shall be completed upon the implementation of Law on Foreigners ("Official Gazette of Montenegro", No. 82/08, 72/09, 32/11, 53/11, 27/13 and 61/13). All persons who did not exercise the right to submit a request to regulate the permanent residence and temporary stay of up to three years from 1 January 2015, are illegally residing in Montenegro.

12. The Ministry of Interior, the Ministry of Labour and Social Welfare and the United Nations High Commissioner for Refugees (UNHCR) — Representation in Montenegro, signed on 6 March 2014 a Memorandum of Cooperation and established a set of measures to be taken in order to provide assistance to displaced persons and internally displaced persons living in Montenegro to apply for resolving their status. The Operational team was formed according to the Memorandum.

13. Among undertaken measures and activities and plans for the future, it should be noted that the combined biometric teams of the Ministry of Interior of Montenegro, the Civil Registration Agency of the Ministry of Interior in Kosovo, UNHCR and the NGO "Legal Centre" have intensively provided legal and practical assistance to IDPs from Kosovo, residing in Montenegro since the late 90s. Therefore, 10 working visits to Konik Camp and all other camps, accommodation and private homes throughout Montenegro have been realised. During these visits, the specific types of assistance and support have been provided.

14. In the period between 7 November 2009 (the date when the Law on Amendments of the Law on Foreigners entered into force) and 1 October 2016, displaced people and internally displaced people have filed the total of 14.167 requests for approval of permanent residence and temporary stay up to 3 years. Out of this number 13.451 requests have been solved and for 716 requests the procedure is in progress.

15. In this period displaced persons filed 4.687 requests for approval of permanent residence. 4.604 requests were solved and for 83 requests the procedure is in progress. Also, displaced people filed 299 requests for approval of temporary stay up to three years; 296 requests were resolved while in 3 cases the procedure is in progress.

16. In the mentioned period, internally displaced persons filed the total of 8.037 requests for approval of permanent residence. 7.423 requests were solved while in 614 requests the procedure is in progress. Also, internally displaced people filed 1.144 requests for approval of temporary stay up to three years; 1128 requests were resolved while for 16 requests the procedure is in progress.

17. As of 1 September 2016, total number of displaced and internally displaced persons that filed requests for approval of permanent residence is 14.167. 1.060 persons received Montenegrin citizenship, while in 15 requests the procedure is in progress.

18. In July 2011, the Government of Montenegro adopted the Strategy for Durable Solutions of Status of Displaced and Internally Displaced Persons in Montenegro, with special emphasis on Konik, for 2011–2015. The aim of the Strategy was to address the issues of refugees and internally displaced persons on a permanent and sustainable way through local integration or voluntary return, in cooperation with the international community and in accordance with international standards and principles. The action plans for the implementation of activities envisaged by the Strategy have been adopted annually.

19. Housing care of refugees and internally displaced persons with special emphasis on Konik Camp is also an integral part of the Strategy and Action Plans. The Ministry of Labour and Social Welfare is a beneficiary of the IPA project "Identifying Durable Solutions for (I) DPs and Residents of Konik Camp". The first component of the project includes the development of social housing and the construction of a multipurpose centre in the area of Konik.

20. The construction of housing units in Konik — IPA project officially started on 09 August 2014. The construction company "Fidija", was selected as a contractor and the control was exercised by "Zigma". Through the first phase, 48 housing units of the total of 90 were built, as planned. The construction of facilities is completed in November 2015, after which the Ministry of Labour has begun procedures for the technical acceptance and the process of obtaining occupancy permit by the competent local authorities. In addition, the Commission for selection of users determined the ranking list of future users. The Minister of Labour and Social Welfare with the representatives from the DEU in Montenegro handed over the keys to tenants in December 2015. In order to create better conditions for the residents of the Konik Camp, the European Commission has allocated funds in the amount of €52,000.00 for the construction of a multipurpose centre (project office, a place to work with children and youth). The continuation of this project and the construction of the remaining 51 residential units are underway and the construction will begin by the end of 2016.

21. The Ministry of Labour and Social Welfare is responsible for the implementation of the Regional Housing Programme. The aim of this program is to provide durable and sustainable housing solutions for 74,000 refugees and internally displaced persons after the 1991–1995 conflict in the former Yugoslavia. RHP, with total estimated costs in the amount of 584 million euros is primarily funded by donors, while partner countries are participating with national contributions, which are primarily reflected in the provision of land for the construction and municipal infrastructure. The biggest donor is the European Union, with a total of 230 million euros. Other donors are the United States, Germany, Italy, Switzerland, Norway, Denmark, Turkey, Luxembourg, Cyprus and others. The National Housing Programme for Montenegro served to envisage the provision of funds for housing for 6,063 people (1,177 households), which belong to the most vulnerable categories of refugees (persons accommodated in informal collective centres and vulnerable people in private accommodation, with special emphasis on Konik Camp). This program envisaged the construction of 907 housing units; delivery of construction materials for 120 housing units; construction of 60 prefabricated houses; 490 units in the Home for Elderly, Pljevlja.

22. Currently, the implementation of four sub-projects that were approved for funding from the Regional Housing Fund is underway.

23. Bearing in mind that a large number of activities and objectives of the Strategy are completed in due time, but also that a number of activities has not been fully implemented by the end of 2015, when the termination of the Strategy was originally scheduled, and that a significant number of these individuals are still in the need for assistance in achieving a lasting solution, the need to extend the validity of the Strategy for a further three years, until the end of 2018 is recognized. In this way, the Government confirms commitment to responsible treatment of persons who have found refuge in its territory and expresses its readiness to work on creating the conditions for the final resolution of the issues that are subject of the Strategy. The Strategy for 2016–2018 builds on the basic text of the Strategy for 2011–2015, and represents a part of it.

The achieved results — Konik camp I and II in Podgorica

24. Number of residents Konik camp I and Konik camp II:

- Konik camp I: 970 persons — 180 families;
- Konik camp II: 34 persons — 12 families.

Voluntary return

25. During 2016 the legal right to voluntary return have four families from Konik camp I, and by the end of 2016 it is planed voluntary return for 20 families: 7 from Konik camp II, 4 from Berane and 7 from Konik camp I.

26. At the beginning of 2017, voluntary return is planned for 5 families from Konik camp II. With this return we will close this camp.

Housing care

27. In the context of Regional housing programme the construction of 120 residential units is underway, for the most vulnerable families from Konik camp 1:

- total costs of the project: 7.171.750 €, 6.226.622 € funded by donors;
- the construction started 11 February 2016 and it would be completed during 16 months.

28. Also, donors approved the additional 51 residential units in Konik of the remaining funds of sub-projects MNE2: funded by donors 1.950.977,11 €.

29. The finalization of this project will enable closing of Konik camp II.